

ECO-TOUR VENDOR PERMIT AGREEMENT

THIS AGREEMENT (“Agreement”), made and entered into on the _____ day of _____, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the “County”), and _____ (hereinafter referred to as “Permittee”).

WHEREAS, the County operates and regulates parks, watercraft launch access areas and appurtenances as active and passive public recreation facilities; and

WHEREAS, the County has a unique ecosystem on the coast of Florida that affords an eco-tourism experience for visitors and residents alike through the services provided by eco-tour vendors; and

WHEREAS, the County wishes to maintain and enhance the watercraft users’ experience while protecting the various waterways’ fragile ecosystem; and

WHEREAS, the locations that provide watercraft launch access have limited parking and launch capacity requiring a need for regulation and control; and

WHEREAS, the provisions for limited commercial tourism is compatible with public use; and

WHEREAS, pursuant to Brevard County Code, Chapter 78-107, “no person shall sell, keep, or offer for sale any tangible or intangible object, merchandise or thing nor solicit for any trade, occupation, business or profession for consideration within any park, recreational facility, or department managed lands without a permit from the department” ; and

WHEREAS, there are a limited number of locations which may provide commercial services on the waterways at this time; and

WHEREAS, it is the County’s desire to serve the public in accordance with this Agreement and under the regulation of the County; and

WHEREAS, the County and the Permittee desire to set forth the terms and conditions for public service in parks with watercraft launch access; and

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration passing between the parties hereto, receipt of which is hereby acknowledged, the parties hereto agree as follows:

RECITALS. The foregoing recitals are true and are incorporated herein by reference.

1. **Grant.** The County hereby grants to Permittee an Eco-Tour Vendor _____ Permit, attached hereto as **Exhibit A**, to conduct commercial eco-tours at specific location(s) described in **Exhibit A**. Permittee must comply with all applicable rules and regulations.
2. **Duration of Agreement.** This Agreement shall continue in force and effect for a term commencing on the Effective Date of this Agreement and expiring on _____. On or before the effective date of this Agreement, Permittee shall deliver to the County the policies of insurance required hereunder.

Should the Permittee fail to comply with the foregoing, it shall acquire no right, privilege or authority under the Agreement whatsoever.

3. **Fees.** All fees shall be paid in full or in equal amounts on a quarterly basis with final payment received by the County before the expiration date of this Agreement. No fee amount quoted herein includes any applicable taxes or fees that Permittee may be liable for in connection with the business or operation conducted under this Agreement. Failure to make payment in full on the date the permit is issued or in equal amounts on a quarterly basis beginning on the date the permit is issued shall constitute a breach of this Agreement. No refunds will be given after date of issue.
 - a.) **General Permit Fee:** An Eco-Tour Vendor General Permit Fee shall be established at Five Hundred Dollars (\$500) annually. A one-time payment of \$500 shall be paid upon issuance of permit or \$125 shall be paid quarterly beginning on the date the permit is issued.
 - b.) **Restricted Use Permit Fee:** An Eco-Tour Vendor Restricted Use Permit shall be established at One Thousand Dollars (\$1,000) per day. A one-time payment of \$1,000 shall be paid upon issuance of permit or \$250 shall be paid quarterly beginning on the date the permit is issued. Total payment due is based upon the number of days permitted.
4. **Accounting Procedure:** The Permittee shall maintain complete and accurate financial and performance records in accordance with good and accepted accounting procedures, which records shall be available for inspection upon request by the County or any duly authorized representative thereof. The Permittee hereby agrees to maintain financial records and to adopt accounting procedures requested by the County. The Permittee shall cooperate with and provide the County or its duly authorized representative with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.
5. **Right to Audit Records:** In the performance of this Agreement, the Permittee shall keep books, records, and accounts of all activities related to this Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Permittee in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the Permittee for a period of three (3) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Section 119.07, Florida Statutes. All records or documents created by the Permittee or provided to the Permittee by the County in connection with the activities or services provided by the Instructor under the terms of this Agreement, are public records and the Permittee agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.
6. **Indemnification and Insurance:** The Permittee agrees to indemnify and hold harmless the County from any and all liability, claims, damages expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with the activities of the Permittee or with the use, occupation, management or control of the facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The Permittee agrees to defend at his expense any and all actions, suits or proceedings which may be brought against the County arising from the Permittee's activities and that he will satisfy, pay, and discharge any and all judgments that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this indemnification and hold harmless provision. The Permittee shall notify the County immediately in writing of any potentially hazardous condition existing on or about the premises utilized in conducting said program(s). All personal property utilized at a County facility shall be at the risk of the Permittee, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever.

The Permittee agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Permittee's interest therein. The Permittee agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Permittee

against any and all claims, demands and causes of action whatsoever for injuries received and damage to property incurred in connection with the use, occupation, and management or control of the property during any activities conducted thereon by Permittee. Such policies of insurance shall insure the Permittee in the amount of not less than \$1,000,000 and Watercraft Liability Insurance in an amount not less than \$1,000,000 per occurrence to cover any and all liability claims arising in connection with any particular accident or occurrence.

Permittee is responsible for Workers Compensation in accordance with State law.

Said insurance policies shall be endorsed to name the County as an additional insured and shall be entitled to thirty (30) days prior notice of any changes or cancellation in said policies. The Permittee shall provide the described insurance on policies and with insurers acceptable to the County. These insurance requirements shall not relieve or limit the liability of the Permittee. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Permittee's interests or liabilities, but are merely minimums. A certificate of insurance indicating the Instructor has coverage in accordance with the requirements of this Agreement shall be furnished by the Permittee to the Brevard County Parks and Recreation Department, 840 Forrest Avenue, Cocoa, FL 32922 on or before the effective date of this agreement.

7. **Independent Contractor.** The Permittee shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall, in any way, be construed to constitute the Permittee or any of its agents or employees as the representative agents or employees of the County.
8. **Background Investigation Check.** The Permittee, all employees and volunteers hereby agree to submit to a Level 1 Background Screening at the expense of the Permittee. The Permittee may be disqualified based on the results of the Level 1 Background Screening. This Agreement is contingent upon satisfactory completion of Level 1 Background Screening. The County shall terminate this Agreement, effective immediately, if the Permittee is disqualified by the Level 1 Background Screening or if the Level 1 Background Screening reveals one or more felonies or first degree misdemeanors directly related to the Permittee's duties and responsibilities under this Agreement. Level I Background Screening includes the following:
 - Clerk E-Facts – www.brevardclerk.us
 - Fingerprinting (FDLE and National FBI Criminal Check through VECHS) (Schedule through HR).
 - Department of Juvenile Justice check on individuals under the age of 18 when applicable and allowed in lieu of fingerprinting.
 - National Sex Offender Public Website – www.nsopw.gov
9. **Music Performance.** The Permittee shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Permittee shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Permittee agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
10. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
11. **Governing Law.** This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
12. **Venue.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be nonjury.
13. **Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the County.

14. **Public Entity Crimes.** A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted Permittee list.
15. **Emergencies.** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.
16. **Copyright.** No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by the Permittee in the United States or any other country.
17. **Modification.** No modification of this agreement shall be binding on County or the Permittee unless reduced to writing and signed by a duly authorized representative of County and the Permittee.
18. **Standards of Operation.**
 - a. Permittee agrees to adhere to the rules and regulations attached hereto as **Exhibit B**.
 - b. Permittee agrees to secure and maintain all licenses and permits required to operate. Permittee shall meet all federal, state, county and municipal laws, ordinances, policies and rules. A Permittee, conducting tours in the designated area of parks, shall have the appropriate Business Tax Receipt and proof of liability insurance in force.
 - c. Permittee is responsible for payment and remittance to the proper governmental authority of all taxes and fees, whether local, state, or federal, which shall be imposed or assessed by any and all governmental authorities in connection with the business or operation conducted under this Agreement.
 - d. Patrons shall be required to sign a County approved waiver form of liability absolving Brevard County Board of County Commissioners of any liability for death, injuries, or property damage incurred while participating in the commercial operation; copies of the waiver forms must be submitted to the County monthly.
 - e. All eco-tour patrons must wear lifejackets and guides must insure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements while on the waterways.
 - f. Permittees agree to remain ashore in the threat of severe or inclement weather and/or to immediately seek safe harbor upon the first indication that an impending weather conditions might endanger patron.
 - g. The Permittee must supervise the conduct of its patrons and/or employees to ensure that any such activities are not inconsistent with the proper safety, enjoyment and protection of visitors; any improper actions or activities must be corrected immediately and effectively.
 - h. The Permittee must maintain an alcohol and drug free commercial operation.
 - i. The eco-tour must not interfere with the general public's use of park facilities.
 - j. All eco-tours shall be conducted during park operation hours, unless approval has been permitted by the County.
19. **Administration.** The Permittee, in accepting this agreement, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Permittee's conduct of its business when operating in County parks; to set schedules and times for operation and for use of all facilities; to resolve disputes between Permittees, or with County residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the public health, safety and welfare. Any decisions by any member of the

County administration as relates to the above authority may be appealed by the Permittee to the Parks and Recreation Director, or designee, whose decision shall be final.

20. **Areas of Operation.** The County shall designate the parking location for Permittee vehicles and trailers.
21. **Maintenance and Housekeeping.**
 - a. Storage of watercraft, trailers or related equipment on County property is expressly forbidden; all watercraft, equipment and trailers shall be removed from the park at the conclusion of the daily tours.
 - b. Permittee agrees to limit signage to that permanently affixed to the vehicle(s) used to conduct the business. Additional signage placement shall be at the discretion of the County.
 - c. The Permittee agrees to clean and remove paper, trash and debris generated by the eco-tour operator and/or patrons of the business.
22. **Termination of Permittee Agreement.**
 - a. The Permittee agrees to notify the County, in writing, of its intentions to terminate this agreement.
 - b. The rights of the Permittee may be immediately terminated by the County upon written notice by certified U.S. mail to the Permittee of failure of the Permittee to comply with the terms, limitations or conditions specified in this agreement. Fees paid are non-refundable.
 - c. Either party may terminate this Agreement for their own convenience upon providing thirty (30) days written notice to the other party. In the event of a termination for convenience, permit fees shall not be refunded.
23. **Non-Exclusivity.** The Permittee and the County agree that use of the designated parks and recreational areas as a commercial eco-tour location is non-exclusive. Permittee shall not interfere with the general public's use and enjoyment of the park.
24. **Business Interruption.** The County shall not be liable to the Permittee for any damages arising out of the temporary prohibition of use and/or access to the designated parks, docks or launch areas for environmental protection, public safety, maintenance or governmental activities or events which prohibits the Permittee from being present and/or engaging in its business activities.
25. **Notice.** Notice under this Agreement shall be given to the County by mailing written notice postage prepaid, to the Brevard County Parks and Recreation Department at 840 Forrest Avenue, Cocoa, FL 32922; and notice shall be given to the Organization by mailing written notice, postage prepaid, to _____.
26. **Assignment.** The Permittee shall not assign any portion of this Agreement.
27. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

**BREVARD COUNTY PARKS AND
RECREATION DEPARTMENT:**

Reviewed for legal form and content:

Assistant County Attorney

Jack Masson, Director
Parks and Recreation Department

Date

WITNESS:

PERMITTEE:

Signature

Date

Exhibit B

RULES & REGULATIONS GOVERNING COMMERCIAL ECO-TOURS IN COUNTY PARKS

- All commercial operations within or from any County park must have Permittee rights granted to the business owner.
- All patrons of Permittee eco-tour vendors must sign a waiver of liability (Participant Waiver and Hold Harmless Agreement).
- The Permittee agrees to abide by the terms and conditions of the eco-tour permit agreement. Violations will result in termination of the agreement and loss of rights and privileges to conduct specified commercial operations.
- Permittees are responsible for the supervision and conduct of their patrons.
- Permittees must educate patrons to respect the fragile environment, waterways and wildlife and to discourage patrons from feeding, touching, petting or otherwise disturbing wildlife.
- Permittees agree to clean and remove trash and debris generated by their operations or patrons.
- Storage of watercraft, trailers and related equipment on County property is expressly prohibited; all such items must be removed from park at the conclusion of the daily tours.
- Permittees shall not charge patrons a parking fee.
- Permittees agree to restrict commercial signage to that permanently affixed to their vehicles.
- Permittees agree to comply with schedule and location restrictions as outlined in Exhibit A.
- All patrons must wear lifejackets and guides must ensure adequate operable audio warning devices are available to all patrons in accordance with U.S. Coast Guard requirements.
- Permittees agree to conduct themselves and their businesses in an ethical and cooperative manner and to facilitate a harmonious locale by getting along with other operators and private park users.
- Any problems, disputes or concerns are to be directed to the Parks and Recreation Director located at 2725 Judge Fran Jamieson Way, Bldg. B Suite 203, Viera, Florida, 32940.